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10/535,219	12/27/2005	Jaume Prat Terradas	30607/41159	2004

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EXAMINER	
DIAZ, THOMAS C	

ART UNIT	PAPER NUMBER
3656	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/535,219	PRAT TERRADAS ET AL.	
	Examiner	Art Unit	
	THOMAS DIAZ	3656	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 February 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *24-43* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *24-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *17 May 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

This office action is in response to the reply filed on 02/19/2009. Claims 44-46 have been canceled. Claims 24-43 remain pending.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 24, 26-33, 35, 40-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Prat et al. (DE 10033703).

Regarding claim 24, Prat et al. discloses a similar device comprising:

- a subpedal (fig.2, 20a) pivotably mounted to the motor vehicle;
- a pedal (fig.2, 10 and 30) slideably coupled to the subpedal by a first slide link (fig.2, 21 and 30a); and
- a single positioning element (fig.2, 31 and 32 treated as a single element) pivotably mounted to the subpedal (see fig.2, coupling at 50a) and slideably mounted at the pedal by a second slide link (fig.2, 11 and 31a), so that the pedal glides relative to the subpedal during a pivoting of the positioning element effected manually or by means of an actuator (fig.2,

40) acting on the positioning element, wherein the positioning element is further mounted to the pedal by a third slide link (fig.2, 11 and 32a) separate from the second slide link.

Regarding claim 26, Prat et al. discloses the subpedal comprises a first elongated guide (fig.2, 21) and wherein the pedal is slideably supported within this first elongated guide by a link (fig.2, 30a), [so that the pedal is adjustable substantially in parallel to a longitudinal axis of the motor vehicle].

Regarding claim 27, Prat et al. discloses the pedal comprises second and third elongated guides (fig.2, 11; one on each side).

Regarding claim 28, Prat et al. discloses first, second, and third paths defined respectively by the first, second, and third elongated guides are arranged such that [when a force is applied to a foot-piece of the pedal, a locking in relative movement of the subpedal, the pedal and the positioning element to each other is produced].

Regarding claim 29, Prat et al. discloses the first, second, and third paths are arranged such that a foot-piece of the pedal follows a predetermined trajectory during adjustment of the pedal.

Regarding claim 30, Prat et al. discloses the pedal comprises a first pin (fig.1, 30a) engaging the first elongated guide, wherein the positioning element comprises a second pin (fig.2, 31a) engaging the second elongated guide, and wherein the positioning element comprises a third pin (fig.2, 32a) engaging the third elongated guide, wherein the first, second and third pins and the first, second, and third elongated guides constitute the first, second and third slide links.

Regarding claim 31, Prat et al. discloses the first second and third paths are substantially parallel to a plane defined by a longitudinal axis and a vertical axis of the motor vehicle (see fig.2).

Regarding claim 32, Prat et al. discloses a path defined by the first elongated guide is substantially straight (see fig.2).

Regarding claim 33, Prat et al. discloses second and third paths defined respectively by the second and third elongated guide are curved (see fig.2; they have a curved portion).

Regarding claim 35, Prat et al. discloses the positioning element is pivotable around an axis which is substantially parallel to a transverse axis of the motor vehicle (see fig.2).

Regarding claim 40, Prat et al. discloses the sub-pedal comprises two external parallel walls (fig.6, both side walls of 130) which are mechnically connected, wherein the at least one positioning element and the pedal are mounted in-between the two walls by means of a first, second, and third elongated guides and the first, second, and third pins (see fig.6; in this embodiment the pedal and positioning elements are located within the subpedal).

Regarding claim 41, Prat et al. discloses the at least one positioning element comprises a V-shaped plate pivotably mounted at a vertex of the V- shaped plate and wherein the second and third pins are arranged at the arms of the V-shaped plate (fig.2, both positioning elements 31 and 32 form a v-shaped plate and have a vertex at 50a, and second and third pins at the arms of the plate).

Regarding claim 42 and 43, Prat et al. discloses an actuator acting on the positioning element or the pedal [is driven by an electric motor or manually driven].

3. Claims 24, 25, 36-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayashihara (USPGpub 20020078784).

Regarding claim 24, Hayashihara discloses a similar device comprising:

- a subpedal (fig.4, 56) pivotably mounted to the motor vehicle;
- a pedal (fig.4, 28) slideably coupled to the subpedal by a first slide link (fig.4, 62); and
- a single positioning element (fig.4, 26) pivotably mounted to the subpedal (fig.4, pivotally mounted to the subpedal through 62) and slideably mounted at the pedal by a second slide link (fig.4, 34 and 38), so that the pedal glides relative to the subpedal during a pivoting of the positioning element effected manually or by means of an actuator (fig.4, 24) acting on the positioning element, wherein the positioning element is further mounted to the pedal by a third slide link (fig.4, 32 and 36) separate from the second slide link.

Regarding claim 25, Hayashihara discloses the positioning element consists only of a single element mounted to the pedal by the second and third slide links (see fig.4).

Regarding claim 36, Hayashihara discloses a rotation point (fig.4, point where elongated guide 62 connects to 26) of the positioning element is located below a rotation point (fig.4, point where actuator 24 connects to 56) of the subpedal.

Regarding claim 37, Hayashihara discloses the subpedal comprises a first elongated guide (fig.4, 62), and wherein a path defined by the first elongated guide is directed between the rotation point of the subpedal and the rotation point of the positioning element (see fig.4, a path defined by the upper portion of guide 62 is directed between the rotation points)11.

Regarding claim 38, Hayashihara discloses a rotation point (fig.4, 20) of the positioning element is located above a rotation point (fig.4 54) of the subpedal.

Regarding claim 39, Hayashihara discloses the subpedal comprises a first elongated guide (fig.4, 62), and wherein a path defined by the first elongated guide lies above the rotation point of the subpedal (see fig.4).

4. Claims 24, 26, 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Asano et al. (USP 5086663).

Regarding claim 24, Asano et al. discloses a similar device comprising:

- a subpedal (fig.3, 6) pivotably mounted to the motor vehicle;
- a pedal (fig.3, 18) slideably coupled to the subpedal by a first slide link (fig.3, 17 and 6a); and
- a single positioning element (fig.3, 21) pivotably mounted to the subpedal and slideably mounted at the pedal by a second slide link (fig.3, 16), so that the pedal glides relative to the subpedal during a pivoting of the positioning element effected manually or by means of an actuator (fig.3, 11) acting on the positioning element, wherein the positioning element is

further mounted to the pedal by a third slide link (fig.3, 16a) separate from the second slide link.

Regarding claim 26, Asano et al. discloses the subpedal comprises a first elongated guide (fig.3, 6a) and wherein the pedal is slideably supported within this first elongated guide by a first link (fig.3, 17), so that the pedal is adjustable substantially in parallel to a longitudinal axis of the motor vehicle.

Regarding claim 34, Asano et al. discloses a path defined by the first elongated guide is arranged substantially horizontal when the pedal is not actuated (see fig.3).

Regarding the functional recitation(s) in the claim(s) above denoted by the "[ ]" the examiner notes while features of an apparatus may be recited either structurally or functionally, claims directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. The reference discloses all the claimed structural limitations and therefore anticipates the claim. See MPEP 2114. Additionally, the apparatus is capable of performing the claimed functions.

Response to Arguments

Applicant's arguments filed 02/19/2009 have been fully considered but they are not persuasive.

Applicant argues: "Prat et al. does not disclose, teach or suggest the slidable coupling of the pedal to the sub-pedal by the first slide link, the pivotal mounting of the positioning element to sub-pedal or the mounting of the positioning element by a third

slide link" and that Prat et al. does not disclose “a single positioning element”. However, as broadly recited in the claims, Prat et al. reads on all the claimed limitations. As identified in the above rejection pedal elements 10 and 30 are slidably coupled to the subpedal 20a through the first link 30a which slides in recess 21. The identified positioning element 31 and 32 combined is treated as a single positioning element. The word single does not imply a one-piece design and thus can still be interpreted as multiple pieces linked together. The third link is clearly identified in the rejection and the positioning element is pivotally mounted at 50a.

Applicant argues: “Hayashihara does not disclose, teach or suggest the slidable coupling of the pedal to the sub-pedal or the pivotal mounting of the positioning element to the sub-pedal, or the gliding of the pedal relative to the subpedal or an actuator acting directly on the positioning element.” However, as broadly recited, Hayashihara reads on the claimed limitations. The first slide link 62 allows for relative pivoting and sliding motion to occur between the pedal and the subpedal and thus it can be interpreted as a slidable coupling although it does not directly connect the pedal to the subpedal. The positioning element is also pivotally mounted to the sub-pedal through the link (62). The pedal (28) would glide along the slots 34 and 32 in the positioning element and thus it would be gliding relative to the position of the sub-pedal (56). As to the argument that "an actuator acting directly on the positioning element", the claim language does not include the word "directly" and thus applicant is arguing limitations which are not in the claim. The actuator 24 acts on the positioning element through the subpedal.

Applicant argues: "Asano et al. fails on a fundamental level in comparison with the claimed subject matter. Lever (6) is not a sub-pedal. Lever (6) is not mounted to a fixed part of the vehicle, but rather pivotally mounted to an L-shaped holder (3), which itself is pivotally supported by a bracket (1) installed on a stationary position (30) of the vehicle. As a result, Asano et al. is not comparable to claimed subject matter." However, the sub-pedal as broadly recited can be interpreted as any type of linkage, arm or support. Applicant is arguing the sub-pedal 6 is no mounted to a fixed part of the vehicle. This limitation is not in the claim. The claim simply recites that the subpedal is pivotally mounted to the vehicle. As broadly interpreted, the sub-pedal 6 of Asano et al. is pivotally mounted to the vehicle via the various linkages that comprise the pedal assembly since it is allowed to pivot about shaft 5 and it is connected to the vehicle. The limitation "pivotally mounted to the motor vehicle" is very broad and does not necessarily imply there has to be a direction connection between a part of the vehicle frame and the sub-pedal. Additionally, the entire pedal assembly is part of the motor vehicle thus as long as the sub-pedal is connected to any part of it and it is allowed to pivot, then it can be considered to be pivotally mounted to the motor vehicle.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THOMAS DIAZ whose telephone number is (571)270-5461. The examiner can normally be reached on Monday-Friday 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on (571)272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas Diaz/

Examiner, Art Unit 3656

/Richard WL Ridley/
Supervisory Patent Examiner, Art Unit 3656